DOCUMENT RESUME

ED 151 485 UD 018 032

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TITLE Remarks by Drew S. Days, III before the Black Achievers' Awards Dinner, Greater Boston YMCA, Boston, Mass.
INSTITUTION Department of Justice, Washington, D.C. Civil Rights Div.
PUB DATE 17 Feb 78
NOTE 16p.

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *Affirmative Action; Black Businesses; Blacks; *Business Responsibility; Construction Industry; Court Cases; *Equal Opportunities (Jobs); *Federal Government; Federal Legislation; Females; *Racial Discrimination; *Sex Discrimination

ABSTRACT

This speech focuses upon the roles of both the business community and the Federal Government in fighting discrimination against women and minorities. In the belief that racial neutrality may only serve to perpetuate inequalities, the private sector is asked to actively cooperate with government nondiscrimination policies. The participation of the business community in Boston's school desegregation plan is cited as an example of past cooperation. The current proliferation of lawsuits challenging government racial goals is mentioned. The Carter Administration's determination to end discrimination is emphasized, as is the Justice Department's commitment to carrying out administration policy. Examples are given of efforts to redress racial and sexual imbalances within the government. In addition, the enforcement of Title VI, whose mandate is to prevent and eliminate discrimination in federally assisted programs, is detailed. The cooperation of business and industry with government antidiscrimination efforts is cited as necessary for the ending of inequalities. (GC)

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ED151485

Department of Justice

REMARKS BY

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DEPARTMENT OF JUSTICE

BEFORE THE

BLACK ACHIEVERS' AWARDS DINNER
GREATER BOSTON YMCA
BOSTON, MASS.

ON

FEBRUARY 17, 1978

CJ0151485

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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I am delighted to be here at your annual Black Achievers' Award Banquet. I was beginning to think that you had called for blizzards in order to see just what type of black achiever I was: whether I would make it on snow-shoes from Washington to Boston or take the easy way out by hiring a team of huskies and a sled. Don't worry, the meaning of those TV commercials has not been lost on me. I am trying harder.

I'm not being entirely facetious. In fact, trying harder is the theme of my speech tonight. You in the business community must join with those of us in government in redoubling our efforts to increase the participation of minorities in the mainstream of American life.

Tonight I would like to address my remarks to the importance of our joint "affirmative action" efforts in the specific area of employment and minority business enterprises. I do so because, if the media are correct, government and industry appear to be on a collision course that can only retard America's movement toward full equality. For example today's Wall Street Journal headline reads "Battle Over Bias ; some companies fight tougher federal drive on job discrimination" - the dateline is Boston. The significance of the results when the business community acts affirmatively has already been amply demonstrated. Here in Boston we can begin with the Black Achievers Program. We are all familiar, for example, with the Boston School Desegregation Plan entered by Judge Garrity in 1975. Some of the details of the plan, some of the very positive aspects of the plan, may have escaped public notice as a result of the

appalling and tragic violence which heralded the plan's initiation. The business community in Boston, however, has played no small role in the implementation of the school desegregation plan. The Trilateral Task Force, made up of business leaders, has been working with the Boston School System since June of 1974 to improve the quality of education. As Judge Garrity noted in his order on desegregation of May 1975, this represents a substantial commitment of the talent, resources and experience of the Boston business community to the city's high schools.

The leadership of the business community in Boston is to be congratulated for the commitment to nondiscriminatory quality education which is evident in the work of the task force. But while your good faith efforts in pairing business with the high schools in the community are laudable, they are not enough. You, too, must try harder.

If we are going to remedy the effects of past and present racial discrimination, business leaders cannot sit back and wait until courts appoint them to participate in attacking major social problems such as school desegregation.

Recently there have been increasing efforts by governments -- state, local, and federal - to end the historical exclusion of women and minorities from the mainstream of business life. It is time for the business community to cooperate fully with these efforts, and to place the elimination of discrimination high on its agenda. Nondiscrimination must be regarded, in the first analysis, as good business policy.

Let me give you a local example of a state's voluntary efforts to remedy the lingering effects of historic discrimination. The

Massachusetts Bay Transit Authority included a special provision in the federally assisted South Cove Tunnel Contract that called for a goal of using minority subcontractors for 30% of the contract. One bid was lowest in dollar amount but failed to comply with the affirmative action requirement. Therefore, the M.B.T.A. awarded the bid to the second lowest bidder who had satisfied the 30% minority subcontractor's goal. The low bidder then instituted a civil action alleging that the M.B.T.A. plan violated the Fourteenth Amendment of the Constitution, and Title VI of the 1964 Civil Rights Act, which prohibits discrimination in federally funded programs.

Whether the Commonwealth was correct with regard to its decision in this specific case is a matter that will be settled through litigation. The Department of Justice is participating in this action as a friend of the court to underscore this administration's support for carefully designed affirmative action plans in aid of minority subcontractors. It has become increasingly clear to us that the elimination of discrimination on a case by case basis is not enough. Numerical goals are a legitimate response to years of discrimination against minority businesses in the contracting industry, and their resulting disproportionately low representation. The courts have recognized, and you must too, that racially neutral actions may simply perpetuate the effects of past discrimination. As Judge Coffin said in ruling upon an earlier attempt by Massachusetts

to address this problem:

> "It is by now well understood, however, that our society cannot be completely color-blind in the short term if we are to have a color-blind society in the long term."

In a similar series of cases pending before 26 courts across the country, the Justice Department is defending a bill which Congress enacted that requires that 10% of the value of local public works contracts will be channeled into the minority business community - either through subcontracts (which may be negotiated without competitive bidding) or through the purchase of goods and services.

The lawsuits which the Justice Department is defending are being brought by local chapters of a national contractors' association. In filing suit, the contractors challenge the fact that Congress has established a numerical standard for participation by minority-owned businesses. They object further to the fact that Congress has chosen to shift the burden to grantees and prime contractors to seek out and help qualified minority-owned businesses secure contracts.

On the other hand, we maintain that Congress was acting appropriately in imposing some numerical standard to guide affirmative action efforts and to measure their success. Without a numerical guide-post, grantees and prime contractors would have no way of determining whether they were complying with the congressional mandate, nor would it be possible to correct noncompliance without

upsetting the program.

It is our contention that the minority business provision was necessary to correct the gross under-representation of minority business in federal grant projects. In introducing the provision to the Senate, Senator Edward Brooke stated that "Minority businesses have received only 1 per cent of the federal contract dollar despite repeated legislation, executive orders and regulations mandating affirmative efforts to include minority contractors in the federal contracts pool."

In 1972, according to census statistics, minority-owned firms represented only 4.3% of the total number of establishments in the construction industry.

The exclusion of minority-owned businesses from opportunities in the construction industry has resulted from the operation of subtle forces. Past discrimination has operated in conjunction with economic forces and contracting standards to exclude minority participation in contracting programs.

In enacting this legislation, Congress has acted in response to a broad societal problem stemming from both official and private action. Although non-minority contractors may not have engaged in discrimination, they may benefit indirectly from the exclusion of minority contractors from business opportunities. It is my understanding that members of the national contractors association,

the Associated General Contractors of America, which is spearheading the drive to challenge the 10% set-aside provision by filing lawsuits, traditionally get 81% of all government contracts. Out of the 4 billion allocated under the Act, they still have the right to complete for $3.6 billion that they wouldn't otherwise have.

In light of the statistics, some might regard the proliferation of lawsuits challenging racial goals as reflective of the refusal of the "haves" to cede anything to the "havenots." The United States Supreme Court stated recently, in another context, that in the process of remedying racial discrimination there must be "a sharing of the burden of the past discrimination." I would suggest that the Association of General Contractors is unwilling to accept that responsibility.

Moreover, racial goals are not inconsistent with merit principles. Goals, unlike quotas, are not inflexible. You will only be required to make a good faith effort. It is never necessary to hire a person or retain a company lacking the qualifications to perform the job. You are not required to give preference to someone less qualified provided that the qualifications you use are valid ones. They must really measure the ability of a person or company to do the job. It is time that business realized that there is no conflict between a true merit system and racial goals to promote equal opportunity and to remedy the effects of past societal discrimination. It must

realize, however, that the merit system can operate effectively only where everyone is given a full and fair opportunity to compete.

I ask for your support of voluntary governmental racial goals to remedy past discrimination. But even more importantly, I ask that business not merely react to outside pressures but rather voluntarily seek to uproot the basic patterns of bias against both minorities and women.

The Federal Government is not asking you to do more than it is doing itself.

This administration is totally committed in its funding and litigation to the principle of affirmative action. Only recently the President responded as follows to a question about affirmative action. Let me quote what he said:

> I hate to endorse the proposition of quotas for minority groups, for women or for anyone else. That contravenes the concept of merit selection. However, I think it is appropriate for both private employers, the public governments and also institutions of education, health and so forth, to try to compensate as well as possible for past discrimination, and also to take into consideration the fact that many tests that are used to screen applicants quite often are inadvertently biased against those whose environment and whose training might be different from

white majority representatives of our society. It is not an easy question for one as President to answer, either. I just want to be sure that if we do make a mistake in this carefully balanced approach, that the mistake might be to end discrimination and not the other way around.

The federal government is one of the largest employers in the nation; federally-assisted programs receive billions of dollars each year; and countless federal laws and regulations affect every citizen's life. Therefore, it has the highest responsibility to ensure that equal opportunity laws applicable to federal employees and funding programs are enforced in an effective manner. At the Justice Department, we take this responsibility seriously.

Within the Justice Department, we are doing what we can to ensure that no women or minorities are denied equal employment opportunity. The statistical pattern we found in January 1977 was less than impressive. As of December 1976, females constituted only 11.5 percent of all department attorneys. At policy making levels, there were only three women out of a total of 417. Minority attorneys were only 4.0 percent of the entire department staff; five minorities were in policy making positions. In May of this year, the Department created an Employment Review Committee

charged first with reviewing the files of minority and female attorneys in grade beyond the requisite time who had not been promoted to determine whether discrimination was responsible for the lack of promotion. Secondly, the Committee was authorized to review for a two-year period all proposed employment of attorneys and all promotions of attorneys to GS-13 or above (GS-11 is the normal entry level for attorneys). Contrary to reports published shortly after its creation, the Committee was not established to prevent white male attorneys from being hired or promoted for two years. But it is a serious effort, chaired by Assistant Attorney General Barbara Babcock, head of the Civil Division and myself to ensure that everyone in the Department gives more than lip-service to affirmative action. We are already able to point with pride to a markedly improved pattern.

Our commitment to affirmative action can be demonstrated in our work with other federal agencies as well.

In December, the administration proposed uniform guidelines for employee testing and other selection procedures. These guidelines are an attempt to protect the rights of workers to be hired and promoted on the basis of job-related standards and without unfair regard to race, sex or ethnic background.

The proposed guidelines were developed jointly by the Department of Justice, the U.S. Equal Employment Opportunity Commission (EEOC), the Department of Labor and the Civil Service Commission. Prior to this effort, employers dealing with the federal government had to figure out which of two sets of guidelines would govern their hiring practices.

Under the proposed guidelines, any selection procedure that adversely affects members of a particular race, sex or ethnic group must be validated, or shown to be job-related. The new guidelines insure that for the first time all employer groups - private employers, government contractors and subcontractors, employment agencies, state and local governments, and the federal government itself - are subject to the same requirements.

Another example of our affirmative action efforts is in the Title VI enforcement area.

Title VI is the major statute requiring federal agencies to prevent and eliminate discrimination in federally-assisted programs. Title VI is limited to prohibition of racial and ethnic discrimination, but other special statues of similar nature cover sex discrimination, e.g., the Revenue Sharing Act and the 1968 Crime Control Act, which authorizes funding by LEAA to law enforcement agencies. Between 65 and 70 billion dollars a year are disbursed to recipients covered by provisions of Title VI.

A major problem in the Title VI area has been the historic lack of coordination of federal compliance efforts. Although the Attorney General was assigned a coordination role by executive order, until recently he had minimal "clout" to effect consistent policies.

With respect to Justice's coordination role, President Carter issued a memorandum on July 20, 1977 to the heads of all executive departments and agencies firmly committing this administration to Title VI enforcement. The memorandum directed agency heads to exert firm leadership in this regard and to insist that their staffs cooperate fully with Department of Justice staff in developing strong and consistent enforcement procedures. The President stated there:

> Title VI of the Civil rights Act of 1964 writes into law a concept which is basic to our country -- that the government of all the people should not discriminate on the grounds of race, color or national origin. There are no exceptions to this rule; no matter how important a program, no matter how urgent the goals, they do not excuse violating any of our laws- including the laws against discrimination.

In late 1976, the Department of Justice issued detailed regulations to provide guidance to agencies enforcing Title VI. In December 1977, I issued a directive to the heads of 28 agencies, instructing them to comply with these regulations and submit a Title VI enforcement plan to me within 45 days. This is

the first such directive issued since January 1974 when the responsibility for coordinating Title VI enforcement was first placed with the Attorney General. It will be done again as the need arises.

As the late Senator Humphrey stated during the debate on the Civil Rights Act of 1964, "simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination."

Even more than any recent administration, we are sensitive to Senator Humphrey's point and are making sure that federal dollars are spent in ways that are nondiscriminatory and supportive of the goal of bringing minority people into the mainstream.

As one example, in mid-September, President Carter instructed federal departments to double purchases from minority companies over the next two years.

I hope I am making it clear that this administration will not stand helplessly by, while the situation worsens. As a matter of policy, we will continue to require goals and timetables as a necessary part of any court settlement in which the United States is a party. Without such benchmarks, it is impossible to monitor effectively the quality of a recipient's efforts to implement an agreement.

It is our intention, furthermore, to be more than reactive; we intend to stimulate action, When efforts to obtain voluntary

compliance fail, we stand ready to apply the sanctions provided by law. In other words, to abide by the President's commitment to introducing "plain english" into bureaucratic communications, we will sue you.

Employment experts have consistently found that discrimination against minorities and women does not occur in isolated pockets but is built into the fabric of the nation's business operations. They conclude that these patterns can be broken only by sweeping measures against patterns and practices of discrimination, and not merely by pursuing individual complaints.

In his recent book, "Black Labor and the American Legal System," Herbert Hill, National Labor Director of the NAACP for 28 years, and now a professor at the University of Wisconsin, writes:

> " As a result of protest and exposure, an employer or union, may, on occasion, be expected to remedy single acts of discrimination, but to uproot a basic pattern of industrial activity obviously requires the will to apply the full power of the law, a will that has been singularly absent."

Certainly, the federal government can sue to achieve an end to discrimination on a case-by-case basis. And we will do so.

But in my estimation, litigation alone will never be able to get the total job done.

Only you in the business community ultimately have the power and the ability to take these sweeping measures that will eradicate

discriminatory employment patterns and practices once and for all.

And remember, not trying harder is not trying at all.